



Competitive Sourcing
and Proposed Revisions
to Circular A-76
Nov. 14, 2002



The Revised Circular

- **Revised Document**
 - Cancels Transmittals
 - Cancels OFPP Policy Letter 92-1
 - Cancels OMB Circular A-97
- **Policy of Reliance on Competition**
- **Presumption that Work is Commercial**
- **Competitions in Compliance with FAR and the Circular**
- **Centralize and Designate a Senior Policy Official to Implement Competitions**
- **Full Accountability**



Circular A-76 in Context

- **The Government Performance Results Act**
- **The Chief Financial Officers Act**
- **The Government Management Reform Act**
- **The FAIR Act**
- **The President's Management Agenda**
 - **Strategic Management of Human Capital**
 - **Electronic Government**
 - **Improved Financial Performance**
 - **Performance/Budget Integration**
 - **Competitive Sourcing**
- **Budget Constraints**

The Revised Circular A-76

Goals

- **Improve Inventories / Transparency**
- **Expand Competition**
- **Easy, Fair & More Familiar**
- **Flexible Source Selection**
- **Avoid Appearances of Conflicts of Interest (Jones Hill)**
- **Centralize Implementation Responsibility / Oversight**
- **Improve Post-Decision Oversight**
- **Recompetition**



The Revised Circular A-76 Attachments

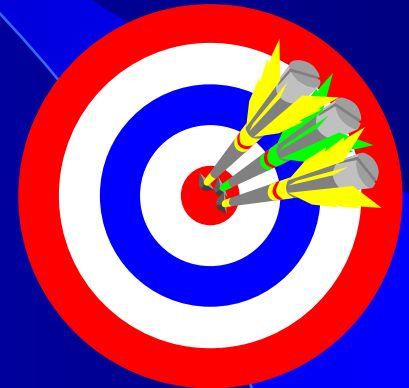
- A. Inventory Process**
- B. Public-Private Competition**
- C. Direct Conversion Process**
- D. Inter-Service Support Agreements**
- E. Calculating Public-Private Competition Costs**
- F. Glossary of Acronyms and Definition of Terms**



Attachment A

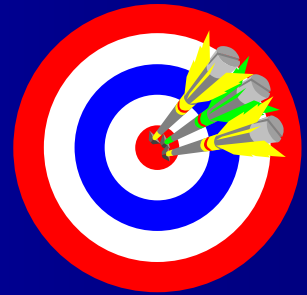
The Inventory Process

- **FAIR Act Commercial Activities Inventory**
 - Submission to OMB (June 30)
 - OMB Review/Consultation
 - OMB Federal Register Notification
 - Agency Release to Congress / Public
 - Public Challenges and Appeals to Agencies



Attachment A

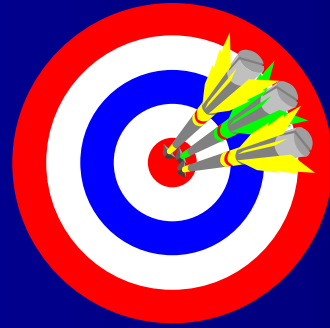
The Inventory Process



- **Non-FAIR Act Commercial Activities Inventory**
 - All Commercial FTE Otherwise Exempt from the FAIR Act
 - Depot Maintenance, NAFIs, Military, Foreign Nationals, Wholly Owned Government Corporations
 - Convert military in commercial activities to contract
 - Army initiative to review all non-core activities
- **Inherently Governmental Activities Inventory**
- **Inventory Summary Report**
- **<http://www.whitehouse.gov/omb/procurement/fair-index.html>**

Attachment A

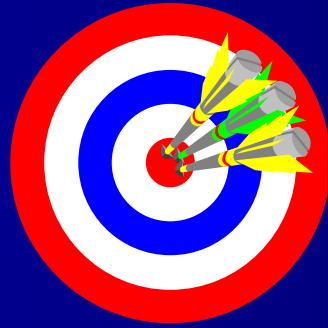
The Inventory Process



- **Inherently Governmental Activities**
 - **Justified in Writing by a Senior Official** (*Many Commercial Activities are within Inherently Governmental and classified Functions*)
- **Inherently Governmental Activities**
 - **Bind the Gov't to a Course of Action – Not Implementation**
 - **Ultimate Control – with Discretion – Not IAW Rule, Regulation, Procedure or Law**
 - **Direct Law Enforcement / The Exercise of Sovereign Authority**

Attachment A

The Inventory Process

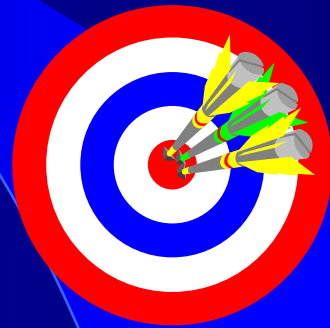


- **Reason Code “A”**
 - **Justified in Writing by a Senior Official**
 - **By Function / Location**
 - **Available to Public upon Request**
 - **MUST be Performed by Federal Employees**
 - **Exception Not the Rule**
 - **Sea/Shore Rotation**
 - **Non-Competitive Residual Core**
 - **Unacceptable Liability or Risk**

Attachment A

The Inventory Process - Cont'd

- **30-Day Challenge to Agency**
 - Written Submission From Interested Party
- **28-Day Agency Review of Initial Challenge**
- **10-Day Appeal Period**
 - Written Final Determination



Competition Requirements

- Does Not Apply to Inherently Governmental Functions
- Does Not Apply to Privatizations/Terminations
- Applies to All Commercial Functions
- Applies to All Commercial ISSAs
- Applies to All Commercial ISSAs with State and Local Governments



Attachment B

Public-Private Competition

- **Limitations and Criteria**
 - Timeframes
 - Deviations / Waivers
 - Agencies Shall Not Perform as a Contractor or Subcontractor to the Private Sector or an ISSA Provider W/O OMB Approval
- **Standard Competition Procedures to Justify**
 - All Commercial ISSAs
 - Continued In-house Performance
 - New Requirements / Expansions



Attachment B

Public-Private Competition

- **Designations and Responsibilities**
 - **The 4.e. Official**
 - **Agency Tender Official (ATO)**
 - **MEO Team**
 - **Contracting Officer (CO)**
 - **PWS Team**
 - **Human Resource Advisor (HRA)**
 - **Labor Relations / Announcements / MEO**
 - **Right-of-First-Refusal**
 - **Source Selection Authority**
 - **Administrative Appeal Authority**



Attachment B

Public-Private Competition

- **Preliminary Planning**
 - **Public Announcement**
 - **Designation of Responsibilities**
 - **Solicitation Timeframe**
 - **Cancellation of a Competition**
 - **Completion Timeframe**
 - **Extension of Timeframes**
 - **Conflicts of Interest**
 - **Oversight**
 - **Personnel Support**

Attachment B

Public-Private Competition

- **Solicitations and the QASP**
 - **Performance Based**
 - **FAR Based**
 - **Sealed Bid**
 - **Negotiated**
 - (LPTA)
 - (CTTO)
 - **Integrated**
 - **Phased Evaluation**

Attachment B

Public-Private Competition

- **Solicitations and the QASP (Con't)**
 - **Performance Periods**
 - **Innovation for Tenders**
 - **Exceptions for Tenders**
 - **Strike Plans**
 - **Small Business Plans**
 - **Subcontracting Plans**
 - **State / local/Professional Licensing / Certifications**
 - **Past Performance (1st competition only)**



Attachment B

Public-Private Competition

- **Agency and Public Reimbursable Tenders**
 - **Procurement Sensitive**
 - **Submit Tender IAW the Solicitation**
 - **ATO Certifies the MEO**
 - **Due as Required by Solicitation**
 - **Evaluated by SSET with All other Offerors**
 - **Discussions/Exchanges**
 - **Cost Realism for Compliance with A-76**
 - **Performance Requirements**

Attachment B

Public-Private Competition

- **Post Competition Accountability**
 - **Implement Decision – Transition**
 - **Contract Award**
 - **Letter of Obligation**
 - **ISSA**
 - **Maintain PWS Currency**
 - **Monitor Performance and Cost**
 - **Inspection / Performance Documentation**
 - **Option Years / Schedule Re-competitions**
 - **Basis for Future Past Performance**
 - **Failure to Perform / Termination**

Attachment B

Public-Private Competition

- **Administrative Appeals Process**
 - **One appeal – All Parties - 10 working Days**
 - Compliance
 - Costs
 - Source Selection / Performance
 - **Comment Period Option**
 - **AAA Shall Not Change the Tender or Review any Issue not raised in the Appeal**
 - **Mandatory Implementation of AAA Decision**



Attachment B

Public-Private Competition

- **Special Considerations**
 - **Right-of-First-Refusal**
 - **Non-Management Job Vacancies**
 - **Does not apply to ISSA work**
 - **Does not apply to Contract work**
 - **Does not apply to work performed by the Military**
 - **Does not apply to SSEB**
 - **MEO Team – Limited**
 - **PWS Team - Limited**

Attachment C

Direct Conversions

- **Criteria**

- **Small Activity (10 or fewer FTE)**
- **No Employee Impact**
- **R&D**
- **Direct Patient Care**
- **Military / National Defense**
- **JWOD**
- **Waiver**
- **Business Case Analysis**
- **Law**

Attachment C

Direct Conversion Process

- **Written Certification**

- **By 4.e. Official**
 - **Meets Criteria**
 - **Probable Cost is Reasonable**
 - **No Reorganization to Facilitate Direct Conversion**
 - **Announce Intention in *FEDBIZOPPS***

- **Waiver**

- **By 4.e. Official (No Delegation)**
- **Financial Improvement**
- **Service Quality Improvement**
- **Inability of Incumbent to Compete**

Attachment C

Direct Conversion Process

- **Business Case Analysis**
 - **50 or Fewer Employees**
 - **Commonly Contracted**
 - **No More than \$5,000 in Assets need to be purchased**
 - **Labor / Material / Performance Analysis**
 - **15 Working Days Completion**
 - **Meets Criteria**
 - **Probable Cost is Reasonable**
 - **No Reorganization to Facilitate Direct Conversion**

Attachment C

Direct Conversion Process

- **Business Case Analysis**
 - **ATO Prepares Scope / Cost Existing Org (No MEO)**
 - **ATO Submits Sealed Tender to CO**
 - **CO Identifies 4 Comparable Private/ISSA Contracts**
 - **Existing Fixed Price Federal Contracts / ISSAs**
 - **No Market Surveys**
 - **CO Selects Low Contract Price**
 - **CO Opens Agency Tender**
 - **Letter of Obligation**
 - **Issue Solicitation for Contract Award**
 - **Announce Decision in *FEDBIZOPPS***

Attachment D

Commercial ISSAs

- **Competition Requirement**
 - **All Commercial ISSAs**
 - **Over \$1 million in Annual Revenue**
 - **Annual 5-Year Schedule to OMB Due June 30**
 - **Termination**
 - **Announcement of Competitions in *FEDBIZOPPS***
 - **Announce Decision in *FEDBIZOPPS***
 - **ISSA Tenders IAW FAR / Solicitation**
 - **ISSA Costs IAW Attach E**
 - **Recompete IAW ISSA – Performance Period**

Attachment D

Commercial ISSAs

- **ISSAs With State and Local Governments**
 - **Technical / Specialized Commercial Services**
 - **Written Request**
 - **No Private Sector Source Available**
 - **No Additional Resources Req'd**
 - **Agency has Submitted Activity to A-76**
 - **Renewable 3-5 Year Agreements**
 - **All Documentation Available to Public**
 - **Agencies Prohibited From Serving as a Sub-Contractor to a Private Sector Source**

Attachment D

Commercial ISSAs

- **ISSAs With State and Local Governments**
 - Comments Federal Register 1/14/98
 - Comments Federal Register 2/18/99

Attachment E

Calculating Public-Private Competition Costs

- **Special Requirements**
 - **Not less than 3 Years of Cost Data**
 - **Mandatory Standard Cost Factors**
 - **Minimum Differential**
 - **Annual Inflation Factors**
 - **Competitive Phase-in Costs - No Phase-Out Costs**
 - **No Retained Pay**
 - **Mandatory Severance Cost Factor**
 - **No Cost of Competition Costs**

Attachment E

Calculating Public-Private Competition Costs

- **LABOR WITH FRINGE**

- Direct
- Indirect
- Prorated

- **MATERIAL WITH ESCALLATION**

- **OTHER IN-HOUSE COSTS**

- RENT
- DEPRECIATION



FAIR AND REASONABLE COSTS

- **LIABILITY / CASULTY INSURANCE**
- **COST OF CAPITAL**
- **UTILITIES**
- **TRAVEL**
- **MEO SUBCONTRACTS**
- **OTHER**
- **OVERHEAD AT 12 PERCENT OF LINE 1**
- **ADDIITONAL COSTS**
 - **Unusual**
 - **Phase-in**

FAIR AND REASONABLE COSTS

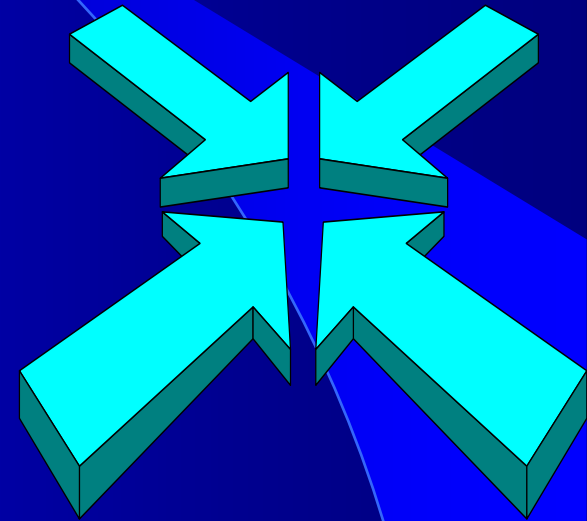
- **CONTRACT PRICE**
 - Award fee
 - Incentive fee
 - Tax Exempt
 - Performance Bonds
- **CONTRACT ADMIN – (TABLE 3-1)**
- **ADDITIONAL COSTS**

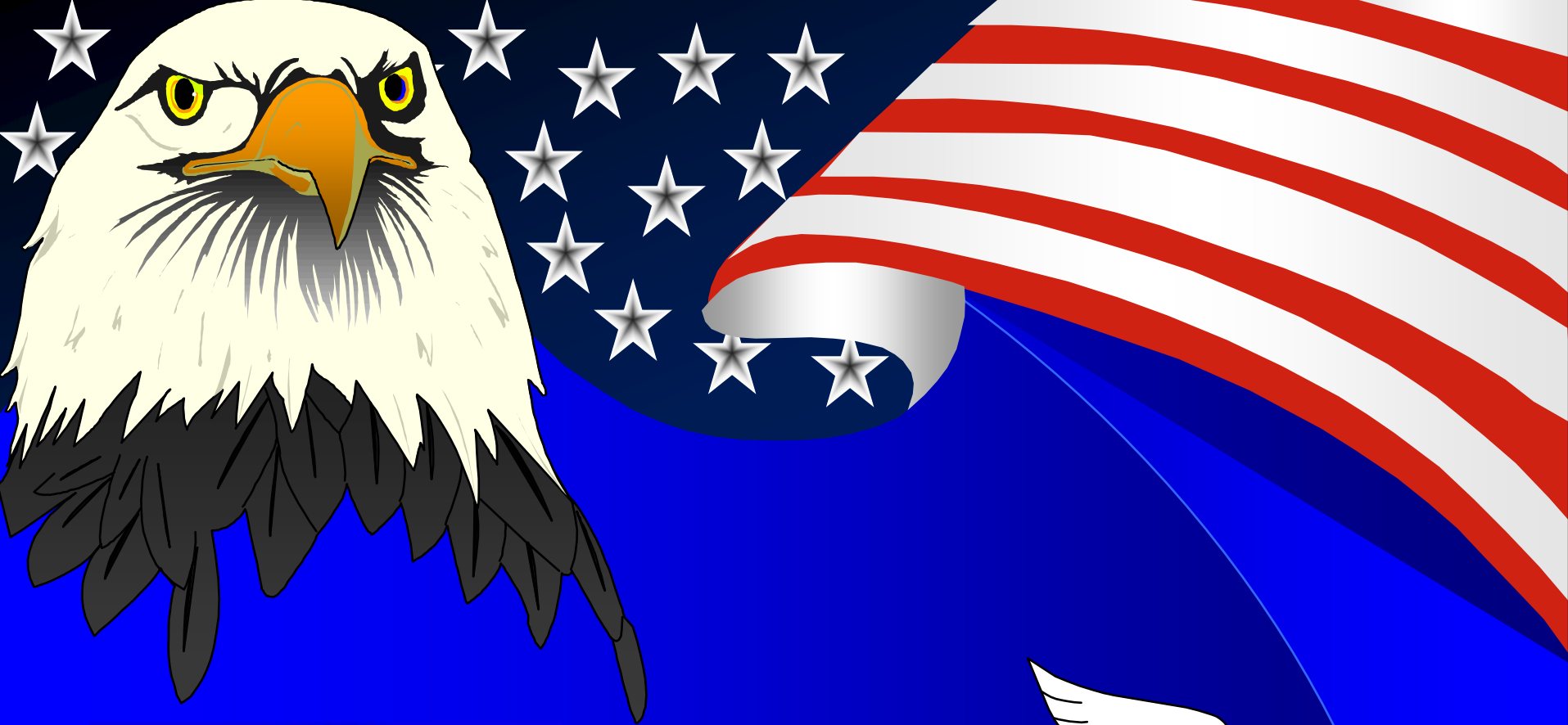
FAIR AND REASONABLE COSTS

- **ONE-TIME CONVERSION COSTS**
 - Severance at 4 Percent of Line 1
 - Relocation, Retraining, Other at 1 Percent of Line 1
- **GAIN ON ASSETS**
- **FEDERAL INCOME TAX**

CONCLUSION

- **The Goal:** Seek the Best Deal to the Taxpayer
- **The Approach:** Keep the Process Moving
- **The Opportunity:**
 - Faster / Cheaper Competitions
 - Improved Performance
 - Improved Performance Measurement
 - Enhanced and Expanded Competition
 - Maintain Sense of Fairness
 - Significant Savings
 - The Redirection of Resources to Mission Critical Req'ts





Questions?

